

8
No. 88-1474

Supreme Court, U.S.

FILED

JUN 15 1989

JOSEPH F. SPANIOLO, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1988

UNITED STATES OF AMERICA, PETITIONER

v.

THE GOODYEAR TIRE AND RUBBER COMPANY
AND AFFILIATES

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FEDERAL CIRCUIT

JOINT APPENDIX

BARRING COUGHLIN

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PETITION FOR WRIT OF CERTIORARI

Filed March 8, 1989

CERTIORARI GRANTED MAY 1, 1989

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folded

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* The opinion and judgment of the court of appeals, the order of the court of appeals denying rehearing, and the opinion of the Claims Court, are printed in the appendix to the petition for writ of certiorari and have not been reproduced here.

UNITED STATES CLAIMS COURT

No. 510-85-T

THE GOODYEAR TIRE & RUBBER COMPANY AND AFFILIATES

v.

THE UNITED STATES

DOCKET ENTRIES

DATE	PROCEEDINGS
Sep. 6, 1985	Filing fee of \$60 paid by plaintiff.
Sep. 6, 1985	Notice of assignment to Judge Moody R. Tidwell filed. Copy to parties.
Sep. 9, 1985	Judge's order governing proceedings before trial filed. Copy to parties. [Counsel to file jointly OGPAT: 14 days before trial; memorandum of fact and law to be filed: 7 days before trial and cannot exceed 10 pages.]
Oct. 30, 1985	Defendant's motion for extension of time (to December 15, 1985) to file its answer filed. Service by mail: 10/30/85. ALLOWED: NOV. 12, 1985.
Dec. 16, 1985	Defendant's answer filed. Service by mail: 12/16/85.
Dec. 17, 1985	Judge's order re Appendix G filed. Copy to parties.

Jan. 16, 1986 Joint preliminary status report filed.

Mar. 7, 1986 Defendant's motion for enlargement of time (to June 30, 1986) for discovery filed. Service by mail: 3/7/86. ALLOWED: MAR. 11, 1986.

Jun. 11, 1986 Defendant's motion for enlargement of time (to August 4, 1986) to file stipulation of facts with appended exhibits and request to modify briefing schedule proposed in joint preliminary status report (Pltf's motion for summary judgment: 45 days after filing of stipulation of facts; defendant's cross-motion: 45 days after service; plaintiff's reply: 30 days after service; defendant's reply: 30 days after service) filed. Service by mail: 6/11/86. ALLOWED: JUN. 13, 1986.

Aug. 1, 1986 Defendant's motion for enlargement of time (to September 18, 1986) for parties to file stipulation of facts with appended exhibits and request to modify briefing schedule filed. Service by mail: 8/1/86. [Pltf's motion for summary judgment: 45 days after filing of stipulation; defendant's cross-motion: 45 days after service of pltf's motion; plaintiff's reply: 30 days after service of deft's cross-motion; deft's reply: 30 days after service of plft's reply] ALLOWED: SEP. 4, 1986.

Sep. 16, 1986 Joint motion for enlargement of time (to October 27, 1986) to file its stipulation of facts, etc. filed by deft. Service

by mail: 9/15/86. ALLOWED: SEP. 18, 1986.

Oct. 24, 1986 Joint motion for enlargement of time (to December 8, 1986) to file a stipulation of facts, etc., and to modify briefing schedule re: motions for summary judgment (pltfs.' brief: 45 days from filing of stipulation of facts—45 days from service—30 days from service—30 days from service) filed by deft. Service by mail: 10/24/86. ALLOWED: OCT. 28, 1986.

Dec. 4, 1986 Joint motion for enlargement of time (to January 12, 1987) to file stipulation of facts and to retain the briefing schedule as to motions for summary judgment filed. ALLOWED: 12/16/86.

Jan. 12, 1987 Joint motion for enlargement of time (to March 2, 1987) to file stipulation of facts with joint appended exhibits filed. ALLOWED: 1/14/87 but no more enlargements of time will be allowed.

Jan. 15, 1987 Defendant's motion to reopen discovery for a period not exceeding 90 days following the filing of plaintiff's motion for summary judgment filed. Service: 1/15/87. DENIED: FEB. 6, 1987.

Feb. 27, 1987 Joint motion to modify briefing schedule:

1. Plaintiff's motion for summary judgment 45 days after filing of stipulation of facts;
2. cross-motion 45 days from service;

3. reply brief 30 days from service and;
 4. reply brief 30 days from service, filed. ALLOWED: 3/3/87.

Mar. 2, 1987 Stipulation of facts filed.

Apr. 15, 1987 Plaintiff's motion for summary judgment together with an appendix in (1 volume) filed. Service: 4/15/87.

Apr. 15, 1987 Plaintiff's proposed findings of additional uncontroverted fact filed. Service: 4/15/87.

Apr. 17, 1987 Joint motion to substitute exhibits to stipulation of facts filed. [Exhibits attached to motion.] ALLOWED: APR. 20, 1987.

May 8, 1987 Defendant's motion for enlargement of time (to June 24, 1987) to file its cross-motion for summary judgment filed. Service: 5/8/87. ALLOWED: MAY 11, 1987.

Jun. 12, 1987 Defendant's motion for leave to exceed page limit (by 10 pages) filed. Service: 6/12/87. ALLOWED: JUN. 15, 1987.

Jun. 29, 1987 Defendant's cross-motion for summary judgment, together with a separate volume of appendix filed [by leave of the judge]. Service: 6/24/87.

Jul. 9, 1987 Plaintiff's motion for substitution of attorney of record [from Stephen L. Buescher (who consents) to Barring Coughlin] filed. Service: 7/8/87.

Jul. 27, 1987 Plaintiff's reply brief, together with a separate volume of appendix, filed. Service: 7/27/87.

Aug. 12, 1987 Defendant's motion for enlargement of time (to September 25, 1987) to file its reply brief filed. Service: 8/12/87. ALLOWED: AUG. 17, 1987.

Sep. 25, 1987 Defendant's reply brief filed. Service: 9/25/87.

Dec. 8, 1987 Judge's order filed. Copy to parties.

Dec. 9, 1987 Judgment entered dismissing complaint. Costs to prevailing party. Copy to parties.

Jan. 25, 1988 Plaintiff's notice of appeal filed. Copy to defendant and C.A.F.C. [\$105 fee paid]. C.A.F.C. No. 88-1201.

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

No. 88-1201

THE GOODYEAR TIRE & RUBBER COMPANY
AND AFFILIATES, APPELLANT

v.

THE UNITED STATES, APPELLEE

DOCKET ENTRIES

DATE	PROCEEDINGS AND ORDERS
January 25, 1988	Notice of appeal filed in the Claims Court. (lc)
January 26, 1988	Notice of appeal and certified list, received. (lc) COUNSEL FOR THE APPELLANT: Barrington Coughlin COUNSEL FOR THE APPELLEE: Gary R. Allen
February 16, 1988	Certificate of Interest for the Appellant, filed. Certificate of Interest for the Appellee, filed.
January 27, 1988	Notice of appeal and certified list, filed. Appeal docketed and notice sent to parties. (lc)

March 24, 1988	BRIEF & SEPARATE ADDENDUM FOR APPELLANT, filed. (SD-3/24-H) (jb)
April 25, 1988	1. Appellee's motion to extend time for filing brief (to & including May 13, 1988), filed. (SD-4/22-M). (bam) (EOD 4/26/88) GRANTED: 4/27/88. (per fxg on 4/26/88). (bam)
May 13, 1988	2. Appellee's motion for an extension of time, to & including May 27, 1988, to file its brief, filed. (SD-5/12-M) scg GRANTED: 5/16/88. (per fxg). (bam)
May 27, 1988	BRIEF FOR THE APPELLEE, filed. (SD-5/27-M) (jb)
June 3, 1988	3. Appellants' motion to extend time to file reply brief (to & including June 23, 1988), filed. (SD-6/3-H). (bam) (EOD 6/6/88) GRANTED: 6/6/88. (per fxg). (bam) (W/LTR)
June 8, 1988	JOINT APPENDIX, filed. (SD-6/8-M) (jb)
June 8, 1988	4. Letter to counsel Coughlin & Allen re ORAL ARGUMENT JULY 7/G. df
June 22, 1988	REPLY BRIEF FOR THE APPELLANT, filed. (SD-6/22-M) (cr)
July 6, 1988	5. Appellant's citation of additional authority, received, pjt (Circulated to panel)
July 7, 1988	ARGUED. (Newman & Bissell, JJ, & Re, J) df

July 11, 1988 6. Appellee's response to questions raised at oral argument, rec'd. (SD-7/8-M). (bam) (EOD 7/12/88) (Circulated to panel on 7/12/88). (bam)

July 18, 1988 7. Appellant's letter regarding letter of appellee responding to questions raised at oral argument, rec'd. (SD-7/15-M). (bam) (EOD 7/19/88) (Circulated to panel on 7/19/88). (bam)

August 31, 1988 REVERSED. (Bissell, J) "JUDGMENT ENTERED" (lc) (F. 2d. 856-0170)

Sept. 8, 1988 8. Appellee's motion to extend time for filing petition for rehearing (to & including Oct. 14, 1988), filed. (SD-9/7-M). (bam) (EOD 9/9/88) GRANTED: 9/12/88. (per bam). (bam)

Sept. 13, 1988 9. Bill of costs against appellee, filed. (SD-9/12-M). (bam) (EOD 9/14/88) (ALLOWED: Nov. 15, 1988, for \$1192.00. (scg)

Sept. 20, 1988 10. Letter from appellee objection to \$948.00 of appellant's proposed bill of costs, filed. (scg)

October 14, 1988 APPELLEE'S PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC, filed. (SD-10/14-M) (jb) 10/25/88: SOP 16 circulated. (df) DENIED: 11-08-88. (ld) 11/10/88: SOP 18 circulated. (ld) 11-18-88 let-

ter to appellant requesting response to suggestion for rehearing in banc by 12-5-88. (ld) DECLINED: 12/28/88. Judge Archer would rehear the case. (df)

Nov. 15, 1988 MANDATE ISSUED TO U.S. CLAIMS COURT. (scg)

Nov. 22, 1988 11. Appellant's motion to extend time for filing response to sugg for rehearing en banc, filed. (SD-11/22-M) (GRANTED: Nov. 23, 1988; per fxg; TO AND INCL DEC. 19, 1988) scg

December 9, 1988 APPELLANT'S RESPONSE TO APPELLEE'S SUGGESTION FOR REHEARING IN BANC, filed (SD-12/9-H). (ld) SOP 18 circ. 12-15-88 (ld)

February 3, 1989 12. Letter from S. Ct. advising that application for an extension of time to file a petition for a writ of certiorari was granted by CJ on 01-25-89 extending time to and including 03-08-89. (ld)

March 8, 1989 PETITION FOR WRIT OF CERTIORARI, filed (S. CT. NO. 88-1474). (ld) GRANTED: 05-01-89. (ld)

IN THE
UNITED STATES CLAIMS COURT

No. 510-85 T

THE GOODYEAR TIRE AND RUBBER COMPANY
AND AFFILIATES, PLAINTIFF

v.

THE UNITED STATES OF AMERICA, DEFENDANT

COMPLAINT

[Filed Sept. 6, 1985]

1. Plaintiff, The Goodyear Tire & Rubber Company and Affiliates, is an affiliated group of domestic corporations which filed a consolidated Federal income tax return for each of the years here involved. The Goodyear Tire & Rubber Company ("Goodyear"), is a corporation organized and existing under the laws of the State of Ohio, with its principal office located at 1144 East Market Street, Akron, Ohio 44316. Its Employer Identification Number is 34-0253240. Defendant is the United States of America.

2. This action is a claim for refund of Federal income taxes for the years 1970 and 1971 arising under the Internal Revenue Code of 1954, as amended, and the jurisdic-

tion of this Court is invoked under the provisions of Title 28, United States Code, Section 1491.

3. Plaintiff files its consolidated Federal income tax returns on the calendar year basis and employs the accrual method of accounting in keeping its books and records and in filing its consolidated Federal income tax returns.

4. On or about September 14, 1971, and September 15, 1972, Plaintiff filed consolidated Federal income tax returns for the years ending December 31, 1970, and December 31, 1971, respectively, with the Internal Revenue Service Center at Cincinnati, Ohio. The address and Employer Identification Number on the returns were as set forth in Paragraph 1. On those dates or earlier, and at later dates in accordance with the agreed adjustments described in Paragraph 8, Plaintiff paid income tax amounting to \$46,263,462 and \$78,013,209 for the years ending December 31, 1970, and December 31, 1971, respectively.

5. In its returns, Plaintiff claimed foreign tax credits under Section 902 for taxes deemed paid to Great Britain in the amounts of \$1,255,871 and \$807,124 for the years ending December 31, 1970, and December 31, 1971, respectively.

6. The Goodyear Tire & Rubber Company (Great Britain) Limited ("Goodyear England"), a wholly-owned subsidiary of Goodyear incorporated in Great Britain and not a member of the affiliated group constituting the Plaintiff herein, reported the following taxable income in the years indicated for purposes of British taxes (in pounds):

1970	£ 3,646,611
1971	3,357,844
1972	(1,397,828)
1973	(3,457,724)

7. In its returns for 1970 and 1971 the Plaintiff reported that Goodyear England had paid the following dividends to Goodyear (in pounds):

1970	£ 937,600
1971	703,200

8. Pursuant to an agreed adjustment between Plaintiff and the Commissioner of Internal Revenue finalized on June 30, 1978, the following items relating to the computation of the credit computed under Section 902 of the Internal Revenue Code for taxes deemed paid by Goodyear with respect to the dividends referred to in Paragraph 7, were agreed to for 1970 and 1971 (in pounds except where otherwise indicated):

	Accumulated Profits	Dividend	British Tax Paid	US deemed paid tax credit relating to Goodyear England
1970	£2,382,437	£946,521	£1,430,036	\$1,356,562
1971	2,521,919	729,289	702,567	493,901

9. In 1975 Goodyear England submitted a Corporation Tax Computation for the calendar year 1973 to the Inland Revenue in Great Britain. This computation claimed the benefit of deductions allowed under the Finance Act of 1975, Section 18, and the Finance Act of 1971, Section 42, as amended by the Finance Act of 1972, Section 67(a), and the Finance Act of 1971, Section 177(3A) of the statutes of Great Britain, in the aggregate amount of £4,533,809, resulting in a loss for 1973 of £3,457,724.

10. In accordance with the Finance Act of 1971, Section 177(3A) of the statutes of Great Britain, the loss of £3,457,724 for 1973 was applied first to 1972. Since 1972 was itself a loss year, the 1973 loss was then applied to offset 1971 income and part of 1970 income.

11. As a result of the net loss for 1973 and pursuant to the statutes of Great Britain referred to in Paragraph 9, the British government made payments to Goodyear England in 1975 and 1976 equal to £671,599 of the £1,430,036 in taxes paid by Goodyear England for 1970 and £650,000 of the £702,567 in taxes paid by Goodyear England for 1971.

12. Under date of November 21, 1980, the Commissioner of Internal Revenue assessed a deficiency for the year ending December 31, 1970, in the amount of \$323,654 plus interest thereon in the amount of \$132,611.66, and under date of November 21, 1980, the Commissioner of Internal Revenue assessed a deficiency for the year ending December 31, 1971, in the amount of \$237,616 plus interest thereon in the amount of \$97,359.06.

13. The assessed deficiencies and interest resulted from the determination by the Commissioner of Internal Revenue that the foreign tax credits claimed by Plaintiff with respect to dividends received by Goodyear from Goodyear England for the years ending December 31, 1970, and December 31, 1971, should be reduced based upon an adjustment under Section 905 of the Internal Revenue Code.

14. Further, in computing the amount of the reduced credits, the Commissioner of Internal Revenue determined that taxes paid by Goodyear England should be reduced, but failed to further adjust Goodyear England's 1970 and 1971 accumulated profits.

15. The actions taken by the Commissioner of Internal Revenue described in the two preceding paragraphs were erroneous.

16. In response to the assessments described in Paragraph 12, on or about December 1, 1980, Plaintiff paid to the Internal Revenue Service Center, Cincinnati, Ohio, the following amounts for the years indicated:

<u>Year</u>	<u>Tax</u>	<u>Interest</u>
1970	\$323,654.00	\$132,611.66
1971	237,616.00	97,359.06

17. The aggregate amount thereby paid by Plaintiff with respect to its income tax liability for the year ending December 31, 1970, was \$46,587,116 and for the year ending December 31, 1971 was \$78,250,825.

18. Plaintiff's correct income tax liability for the years ending December 31, 1970, and December 31, 1971, was \$46,263,462 and \$78,013,209, respectively.

19. Plaintiff has thereby overpaid its income tax for the years ending December 31, 1970, and December 31, 1971, by the amounts set forth in Paragraph 16.

20. On or about November 29, 1982, Plaintiff filed with the Internal Revenue Service Center, Cincinnati, Ohio, a timely claim for refund of \$323,645.00 of assessed tax and \$132,611.66 of assessed interest for the year ending December 31, 1970, and \$237,616.00 of assessed tax and \$97,359.06 of assessed interest for the year ending December 31, 1971, together with interest on those amounts as required by law, on the ground that Goodyear is entitled to additional foreign tax credits for taxes deemed paid with respect to the dividends referred to in Paragraph 7 in the amounts of \$637,097 and \$456,953 for the years ending December 31, 1970, and December 31, 1971, respectively. The address and Employer Identification Number on the claims were as set forth in Paragraph 1.

21. Under date of September 30, 1983, the Regional Commissioner of Internal Revenue by certified mail issued its notice of disallowance of said claim for refund.

22. No action on this claim has been taken by the Congress of the United States or by any Department of Government, except as hereinbefore set forth.

WHEREFORE, Plaintiff Goodyear Tire & Rubber Company and Affiliates prays for Judgment against defendant in the amount of \$791,240.72 together with interest as provided by law, and for such other and further relief as this Court may deem proper.

Respectfully submitted,

/s/ Barring Coughlin
BARRING COUGHLIN

/s/ Stephen L. Buescher
STEPHEN L. BUESCHER — Of Record
Attorneys for Plaintiff
The Goodyear Tire &
Rubber Company

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1100 National City Bank Bldg.
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September 4, 1985

IN THE UNITED STATES CLAIMS COURT

 No. 510-85 T

 THE GOODYEAR TIRE & RUBBER COMPANY
 AND AFFILIATES, PLAINTIFF

v.

THE UNITED STATES, DEFENDANT

 ANSWER

[Filed Dec. 16, 1985]

Defendant, the United States, by its attorneys, in response to plaintiff's complaint filed September 6, 1985, denies each and every allegation contained therein, not admitted, qualified, or otherwise referred to below.

Defendant further:

1-3. Admits the allegations contained in paragraphs 1-3.

4. Admits the allegations contained in paragraph 4, except avers that its attorneys presently are unable to obtain knowledge or information sufficient for them to form a belief as to the truth of the allegations relating to the "agreed adjustments described in Paragraph 8".

5. Admits the allegations contained in paragraph 5.

6. Avers that its attorneys are unable to obtain knowledge or information sufficient for them to form a belief as to the truth of the allegations contained in paragraph 6.

7. Admits the allegations contained in paragraph 7, except avers that plaintiff in its returns for 1970 and 1971 reported that Goodyear England paid dividends to it of \$2,238,727.04 for 1970 and \$1,709,244.80 for 1971 rather than in United Kingdom currency of 937,600 pounds and 703,200 pounds, respectively. Avers that when the above amounts in United Kingdom currency are multiplied by the respective exchange rates of 2.387720819 for 1970 and 2.430666666 for 1971 as set forth in plaintiff's income tax returns, the resulting products equal the above respective dollar amounts in United States currency.

8. Avers that its attorneys presently are unable to obtain knowledge or information sufficient for them to form a belief as to the truth of the allegations contained in paragraph 8.

9-11. Avers that its attorneys are unable to obtain knowledge or information sufficient for them to form a belief as to the truth of the allegations contained in paragraphs 9-11.

12-14. Admits the allegations contained in paragraphs 12-14.

15. Denies the allegations contained in paragraph 15.

16. Admits the allegations contained in paragraph 16, except avers that plaintiff paid the income tax deficiencies and assessed interest for the tax years 1970 and 1971 on December 3, 1980.

17. Admits the allegations contained in paragraph 17.

18-19. Denies the allegations contained in paragraphs 18-19.

20. Admits the allegations contained in paragraph 20, except denies each and every allegation contained in plaintiff's claims for refund for the tax years 1970 and 1971, unless specifically admitted herein.

21. Admits the allegations contained in paragraph 21.

22. Avers that its attorneys are unable to obtain knowledge or information sufficient for them to form a belief as to the truth of the allegations contained in paragraph 22.

WHEREFORE, defendant prays that plaintiff's complaint be dismissed with prejudice at plaintiff's own costs.

Respectfully submitted,

/s/ Glenn L. Archer, Jr.
GLENN L. ARCHER, JR.
Assistant Attorney General

/s/ Robert N. Dorosin
ROBERT N. DOROSIN
Attorney
Tax Division
Claims Court Section
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Washington, D.C. 20530
(202) 724-6501

December 13, 1985

IN THE UNITED STATES CLAIMS COURT

No. 510-85 T

THE GOODYEAR TIRE & RUBBER COMPANY
AND AFFILIATES, PLAINTIFF

v.

THE UNITED STATES, DEFENDANT

STIPULATION OF FACTS

[Filed Mar. 2, 1987]

Plaintiff and defendant hereby stipulate that the facts contained herein are true and accurate for purposes of the above-entitled case only. Each of the parties reserves the right to contest the relevance of any fact stated herein, and to present such other evidence as may be appropriate.

1. Plaintiff, The Goodyear Tire & Rubber Company and Affiliates, is an affiliated group of domestic corporations which filed a consolidated Federal income tax return for each of the years here involved. The Goodyear Tire & Rubber Company ("Goodyear") is a corporation organized and existing under the laws of the State of Ohio, with its principal office located at 1144 East Market Street, Akron, Ohio 44316, and the parent of the affiliated group constituting the plaintiff. Its Employer Identification Number is 34-0253240. Defendant is the United States of America.

2. This is a suit for refund of Federal income taxes for the years 1970 and 1971 arising under the Internal Revenue Code of 1954, as amended. Jurisdiction of the Claims Court is invoked under Title 28, United States Code, Section 1491.

3. During the years involved, and for all preceding and following years, plaintiff filed its consolidated Federal income tax returns on the calendar year basis and employed the accrual method of accounting in keeping its books and records and in filing its consolidated Federal income tax returns. Plaintiff did not make the election with respect to its wholly owned United Kingdom subsidiary, Goodyear Tyre & Rubber Company Ltd., under Treasury Regulation Section 1.902-3(c)(5) (1971) or any other applicable Treasury Regulation to be governed by Section 964 and did not make the election under Section 963(a) to exclude Subpart F income. A copy of Section 1.902-3(c) (1971) is attached as Joint Exhibit L.

4. On or about September 14, 1971, and September 15, 1972, plaintiff filed consolidated Federal income tax returns for the years ending December 31, 1970, and December 31, 1971, respectively, with the Internal Revenue Service Center at Cincinnati, Ohio. The address and Employer Identification Number on the returns were as set forth in paragraph 1. On those dates or earlier, and at later dates in accordance with adjustments agreed to with the Internal Revenue Service, plaintiff paid income tax amounting to \$46,263,462 and \$78,013,209 for the years ending December 31, 1970, and December 31, 1971, respectively.

5. The Goodyear Tyre & Rubber Company (Great Britain) Limited ("Goodyear England"), was, during the years in question and for all other years material to this suit, a wholly-owned subsidiary of Goodyear, incorporated in Great Britain, but was not a member of the af-

filiated group constituting the plaintiff herein. With respect to those years, Goodyear England filed income tax returns in, and paid taxes to, the United Kingdom and the Republic of Ireland, but did not file a United States tax return; it filed its tax returns on a calendar year basis and employed the accrual method of accounting in keeping its books and records and in filing its tax returns. Copies of the British tax returns of Goodyear England for 1968 through 1973 are attached as Joint Exhibits M through R. Also attached as Joint Exhibit S is a copy of one page of Joint Exhibit R.

6. Goodyear England's profit for British tax purposes, as accepted by the British taxing authorities, after allowance for all loss carryback deductions, described below, determined in accordance with British tax law, was as follows for the years indicated:

1968	£ 3,947,459
1969	1,932,178
1970	1,866,923
1971	-0-
1972	(1,397,828)
1973	(3,375,375)

7. For the purposes of the present case, the Commissioner determined that the income before taxes of Goodyear England computed under United States income tax concepts was as follows for the years indicated:

	Amount	Increase
1970	£ 3,812,473	£ 1,945,550
1971	3,224,486	3,224,486
1973	1,137,152	4,512,527

8. The increases made by the Commissioner in the computation of income under United States concepts, as set out in paragraph 7, over that under British concepts, as

set out in paragraph 6, were due to the following adjustments for the years indicated:

	1970	1971	1973
Inventory Adjustment	—	—	£ 2,152,825
Depreciation net adjustment	£ (597)	£ 1,321,681	2,380,984
Dividends	157,538	91,658	—
Group relief disallowance	—	291,762	—
Not explained	—	(154,958)	—
Explanation not Agreed	—	—	(82,349)
	<u>156,941</u>	<u>1,550,143</u>	<u>4,451,460</u>
Agreed IRS Adjustments	8,921	26,089	61,067
Disallowance of British tax concept loss carry-back from 1973	1,779,688	1,595,687	—
Irish Tax Deduction disallowed	—	52,567	—
Total	<u>£ 1,945,550</u>	<u>£ 3,224,486</u>	<u>£ 4,512,527</u>

9. The inventory adjustment set out in paragraph 8 arose out of the non-recognition, for United States tax concept purposes, of Section 18 of the Finance Act 1975 (a copy of which is appended in its entirety as Joint Exhibit A). Pursuant to that section, Goodyear England elected to treat its closing inventory value as reduced by an amount equal to its increase in inventory value for the year, reduced by 10 percent of its trading income for the year.

Plaintiff agrees that the special inventory relief claimed by Goodyear England, and allowed by British tax authorities under British law, would not have been allowable in the computation of U.S. income tax in the return of Goodyear England if Goodyear England had been a U.S. corporation filing a U.S. return.

10. The depreciation net adjustment set out in paragraph 8 arose out of the non-recognition, for United States tax concept purposes, of the effect of Section 42 of the Finance Act 1971, as amended by Section 67 of the Finance Act 1972 (copies of which are appended in their entirety as Joint Exhibits B and C). Under these provisions, Goodyear England was entitled to deduct and elected to deduct depreciation on the cost of machinery and equipment at the rate of 60 percent of cost for the first year with respect to assets acquired before July 19, 1971, 80 percent of cost for the first year with respect to assets acquired between July 19, 1971 and March 22, 1972, and 100 percent of cost for the first year with respect to assets acquired thereafter. The net adjustment consisted of the disallowance of depreciation deducted under the provisions of the British law in excess of an allowance which, for the purposes of this case, is agreed to be the amount of depreciation which would have been allowable if Goodyear England had been a U.S. corporation subject to United States income tax law. Plaintiff agrees that the special depreciation relief claimed by Goodyear England, and allowed by British tax authorities under British law, would not have been allowable in the computation of U.S. income tax in the return of Goodyear England if Goodyear England had been a U.S. corporation filing a U.S. return.

11. The dividend adjustment consisted of the inclusion in the income of Goodyear England of dividends from other corporations which were wholly excludable from in-

come under British law, no dividends received deduction being allowed.

12. The agreed IRS adjustment was made pursuant to a settlement of a previous case involving the plaintiff's United States income tax for the years 1970 and 1971. Under the settlement, plaintiff agreed to include in its United States income as additional dividends from Goodyear England the amounts shown in paragraph 17 below, and to include the same amounts in accumulated profits of Goodyear England in the computation of the British tax deemed paid with respect to those dividends. Having agreed to this adjustment in the settlement of the previous case, plaintiff does not contest it here.

13. The group relief disallowance consisted of the non-recognition for United States tax purposes of an election which Goodyear England was entitled to make and did make under British tax law to attribute a part of its losses to a wholly-owned subsidiary.

14. In accordance with Section 177(3A) of the Great Britain Taxes Act 1970, as modified by Section 8, paragraph 16(6) of the Finance Act 1971 and Section 18 of the Finance Act 1975, providing for a special three-year loss carryback deduction, the loss of £3,375,375 for 1973 (para. 6 above) was applied first to 1972. Because 1972 was itself a loss year, the 1973 loss was carried back to to [sic] reduce 1971 income and part of 1970 income in accordance with a determination agreed upon with the British taxing authorities. A copy of the British law referred to in this paragraph is reproduced in its entirety as Joint Exhibit D. The disallowance of these deductions for United States foreign tax credit purposes arose out of the Commissioner's determination that United States tax concepts should be applied to recompute the income of Goodyear England for 1973, converting its loss for that year into a profit. See paragraphs 7 and 8 above.

15. In 1975, Goodyear England filed with Inland Revenue in Great Britain its United Kingdom income tax return, known as a corporation tax computation, for the calendar year 1973, reporting the above mentioned loss of £3,375,375 to the Inland Revenue in Great Britain. Prior to the 1973 loss carryback deduction as described in paragraph 14, Goodyear England had paid income taxes eligible for tax credit in the following amounts for the years indicated:

1969	£ 833,252
1970	1,430,036
1971	702,567
1972	-0-
1973	-0-

16. For the years 1969 through 1973, Goodyear England paid cash dividends to Goodyear in the following amounts for the years indicated:

	pounds	exchange rate	dollars
1969	937,600	2.3614	2,214,049.00
1970	937,600	2.387720819	2,238,727.04
1971	703,200	2.4306666666	1,709,244.80
1972	—	-0-	-0-
1973	879,000	2.4786	2,178,689.40

17. Pursuant to the IRS Settlement described in paragraph 12 above, the following amounts are to be included in the accumulated profits of Goodyear England for the years indicated and are also to be included in plaintiff's income as additional dividends from Goodyear England for the same years:

1970	£ 8,921
1971	26,089
1972	12,054
1973	61,067

18. In its United States returns for 1970 and 1971, plaintiff claimed foreign tax credits under Section 902 of the Internal Revenue Code of 1954, as amended, for taxes deemed paid to Great Britain in the amounts of \$1,255,871 and \$807,124 for the years ending December 31, 1970, and December 31, 1971, respectively.

19. During 1975 and 1976, as a result of the carryback of Goodyear England's 1973 loss to the prior years 1971 and 1970, the British government made payments* to Goodyear England aggregating £650,000 on account of the loss carry-back deduction for the year 1971 and £671,599 on account of the loss carry-back deduction for 1970.

20. Because of the receipt by Goodyear England of the payments** from the British government in the amounts of £671,599 and £650,000 as described in the preceding paragraph arising out of the carryback of the 1973 loss, the Commissioner of Internal Revenue, asserting Section 905(c) of the Internal Revenue Code of 1954, redetermined the deemed foreign tax credits claimed by plaintiff in its United States tax returns for the tax years 1970 and 1971 with respect to the dividends received from Goodyear England.

21. Joint Exhibits E and F are true copies of Form 1118, Schedules A and B, filed by plaintiff with its 1970 United States Federal income tax return.

22. Joint Exhibits G and H are true copies of Form 1118, Schedules A and B, filed by plaintiff with its 1971 United States Federal income tax return.

23. The position of plaintiff with respect to the computation of foreign tax deemed paid relating to the divi-

* Defendant considers these tax payments from the British government to Goodyear England to be refunds of tax.

** See footnote * above.

dends received from Goodyear England for the years 1970 and 1971 as determined under United Kingdom tax concepts is set forth in Joint Exhibit I.

24. Defendant's position with respect to the computation of plaintiff's foreign tax deemed paid relating to the dividends received from Goodyear England for the years 1970 and 1971 as determined under United States tax concepts is set forth in Joint Exhibit J.

25. Under date of November 21, 1980, the Commissioner of Internal Revenue timely assessed a deficiency for the year ending December 31, 1970, in the amount of \$323,654 plus interest thereon in the amount of \$132,611.66 and a deficiency for the year ending December 31, 1971, in the amount of \$237,616 plus interest thereon in the amount of \$97,359.06.

26. Exhibit K attached is a true copy of relevant portions of the report of the Appeals Office of the Internal Revenue Service with respect to the adjustments to the Plaintiff's foreign tax credit which is at issue in this case.

27. In response to the assessments described in paragraph 25, on December 3, 1980, Goodyear paid to the Internal Revenue Service Center, Cincinnati, Ohio the following amounts for the years indicated:

<u>Year</u>	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
1970	\$323,654.00	\$132,611.66	\$456,265.66
1971	237,616.00	97,359.00	334,975.06

28. On or about November 29, 1982, Goodyear filed with the Internal Revenue Service Center, Cincinnati, Ohio, for the years 1970 and 1971 timely claims for refund of the above amounts together with interest on those amounts as required by law, on the ground that Goodyear is entitled to additional foreign tax credits for foreign taxes deemed paid with respect to the dividends referred to in paragraphs 16 and 17.

29. Under date of September 30, 1983, the Regional Commissioner of Internal Revenue by certified mail issued his notice of disallowance of the claims for refund described above.

30. Goodyear instituted this proceeding in the United States Claims Court against the United States of America on September 6, 1985, to recover the \$791,240.72 that Goodyear paid to the Internal Revenue Service as stated in paragraph 26, together with interest thereon as provided by law.

Respectfully submitted,

Date: /s/ Stephen L. Buescher
Feb. 25, 1987 STEPHEN L. BUESCHER
Attorney of Record
Thompson, Hine and Flory
1100 National City Bank Building
Cleveland, Ohio 44114
(216) 566-5500

Date: /s/ Barring Coughlin
Feb. 25, 1987 BARRING COUGHLIN
Thompson, Hine and Flory
1100 National City Bank Building
Cleveland, Ohio 44114
(216) 566-5500

ATTORNEYS FOR PLAINTIFF

Date: /s/ Roger M. Olsen
3/2/87 ROGER M. OLSEN
Assistant Attorney General

Date: /s/ Robert N. Dorosin
March 2, 1987 ROBERT N. DOROSIN
Justice Department (Tax)
Claims Court Section
Post Office Box 26
Ben Franklin Post Office
Washington, D.C. 20044
(202) 724-6495
ATTORNEYS FOR DEFENDANT

[JOINT EXHIBIT I (REVISED)]

COMPUTATION OF BRITISH TAX DEEMED PAID
USING BRITISH TAX CONCEPTS (IN POUNDS STERLING)

	<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1973</u>
Profit before tax and before carry-back of 1973 loss (Ex. M thru R)	3,947,459	1,932,178	3,646,611	1,648,254	(3,375,375)
Adjustment to U.S. concepts	-0-	-0-	-0-	-0-	-0-
Deduction of 1973 loss carry-back (Stip. 8)	-0-	-0-	(1,779,688)	(1,595,687)	-0-
Deduction of Irish tax (Stip. 8)	-0-	-0-	-0-	(52,567)	-
Profit after all losses before tax (Stip. 6)	3,947,459	1,932,178	1,866,923	-0-	-
Agreed IRS adjustment (Stip. 8)			8,921	26,089	61,067
UK tax (net) (Stip. 15)	(1,752,096)	(833,251)	(758,437)	-0-	-0-
Adjusted accumulated profit	2,195,363	1,098,927	1,117,407	26,089	61,067
Dividends received by parent					
Cash	937,600	937,600	937,600	703,200	879,000
Per agreed IRS adjustment	-0-	-0-	8,921	26,089	61,067
Total Dividends for year	937,600	937,600	946,521	729,289	940,067
Allocation of Dividends					
To 1968	937,600			370,987	879,000
To 1969		937,600		161,327	-0-
To 1970			946,521	170,886	-0-
To 1971				26,089	-0-
To 1973					61,067
Dividends × Tax Divided by Profit (for 1970 and 1971)					
1970: Paid out of 1970: 946,521 × 758,437 Divided by 1,117,407 =			642,449		
1971: Paid out of 1968: 370,987 × 1,752,096 Divided by 2,195,363 =				296,081	
Paid out of 1969: 161,327 × 833,251 Divided by 1,098,927 =				122,325	
Paid out of 1970: 170,886 × 758,437 Divided by 1,117,407 =				115,988	
Paid out of 1971: 26,089 × 52,567 Divided by 26,089 =				52,567	
Tax deemed paid			642,449	586,961	

[JOINT EXHIBIT J (REVISED)]

**COMPUTATION OF BRITISH TAX DEEMED PAID
USING UNITED STATES TAX CONCEPTS
(IN POUNDS STERLING)**

	<u>1970</u>	<u>1971</u>	<u>1973</u>
Profit before Tax and Before 1973 loss (Exs. M thru R)	3,646,611	1,648,254	(3,375,375)
Adjustment to U.S. concepts (Stip. 8)	156,941	1,550,143	4,451,460
Deduction of 1973 loss	-0-	-0-	-0-
Agreed IRS adjustment (Stip. 8)	<u>8,921</u>	<u>26,089</u>	<u>61,067</u>
Profit after losses and before tax (Stip. 7)	3,812,473	3,224,486	1,137,152
Deduction of Irish tax (Stip. 8)		(52,567)	
Deduction of UK tax (Stip. 15 and 19)	<u>(758,437)</u>	<u>-0-</u>	<u>-0-</u>
Adjusted accumulated profit	3,054,036	3,171,919	1,137,152
Dividends received by parent	937,600	703,200	879,000
Cash			
Per agreed IRS adjustment	<u>8,921</u>	<u>26,089</u>	<u>61,067</u>
Total Dividends for year	946,521	729,289	940,067
Allocation of Dividends			
To 1968			
To 1969			
To 1970	946,421	729,289	940,067
To 1971			
To 1973			
	235,038		
		12,086	

$$\frac{\text{Dividends}}{\text{Accumulated Profit After Taxes}} \times \text{Taxes Paid} = \text{Section 902 credit (Sec. 78 income)}$$

$$1970: \frac{946,521}{3,054,036} \times 758,437 = 235,038$$

$$1971: \frac{729,289}{3,171,919} \times 52,567 = 12,086$$

[JOINT EXHIBIT M]

STATEMENT A

THE GOODYEAR TYRE & RUBBER COMPANY
(GREAT BRITAIN) LIMITEDSTATEMENT OF LIABILITY TO CORPORATION
TAX FOR THE YEAR ENDED
31ST DECEMBER 1968

Total profit less charges on income (B)	3,984,746
Less: Group relief (note)	
Tyretreads Limited	12,859
Direct Tyres (Chester) Limited	2,610
Fosse (England) Limited	18,805
Hedley Drake (Tyres) Limited	3,013
	<u>37,287</u>
	<u><u>£3,947,459</u></u>

CORPORATION TAX PAYABLE 1ST JANUARY 1970

Financial year	
1967 (3 months) £986,865 at 42½%	419,417.12. 6
1968 (9 months) £2,960,594 at 45%	<u>1,332,267. 6. 0</u>
	1,751,684.18. 6
Less: Credit for Republic of Ireland Corporation Profits Tax (43)	<u>49,674.10. 7</u>
	1,702,010. 7.11
Add: Income tax suffered on direc- tors fees received deducted in error in 1967 (note)	<u>412.10. 0</u>
	<u><u>£1,702,422.17.11</u></u>

Note: The group relief claimed is in respect of the subsidiaries losses for the accounting period ended 30th November 1968 in accordance with the Inspector's letter dated 21st January 1970. Goodyear's relationship with the subsidiaries was such that Goodyear is entitled to their losses for the whole of that period.

The income tax suffered on directors' fees received was recovered via the medium of the forms CT 61 for the years 1966/67 and 1967/68. The deduction in the corporation tax computation for the year ended 31st December 1967 is added back above.

STATEMENT B

THE GOODYEAR TYRE & RUBBER COMPANY
(GREAT BRITAIN) LIMITEDCORPORATION TAX COMPUTATION FOR THE
YEAR ENDED 31ST DECEMBER 1968

Profit after taxation	2,167,781
Add:	
Amount written off Stratton Street lease (3)	722
Increase in general provision for bad debts (4)	14,362
Amount written off alterations to branches less allowable expenditure (5)	10,727
Increase in reserves for pensions of field representatives (7)	871
Provision for consumer incentive programme (7)	8,221
Taxation (8)	1,937,886
Depreciation (10)	1,683,263
Proceeds on sale of moulds (14)	800
Disallowable items included in repairs (17)	3,067
Disallowable items included in utilities and maintenance (23)	1,711
Disallowable legal and professional charges (25)	2,120
Stamp duties (29)	413
Disallowable items included in branch repairs and alterations (32)	1,081

Disallowable item included in repairs and alterations of retread plants (33)	234
Disallowable subscriptions and donations (34)	1,031
Interest expense (35)	200,717
Disallowable items included in miscellaneous expenses (36)	177,328
Royalties payable (37)	10,004
Disallowable business entertaining expenses (41)	44,833
Prior years' adjustment in respect of capital allowances and entertaining (42)	38,645
	<u>4,138,036</u>
	6,305,817
Less:	
Decrease in provision for unrealised profit on sales to subsidiaries (2)	27,000
Decrease in reserve for vacation expenses of American employees (7)	125
Increase in revenue content of capital work in progress (12)	32,811
Interest receivable (38)	85,853
Deductible item included in incidental income (39)	20,233
Dividend income (40)	157,538
Moulds:	
Half of 1967 additions	138,989
Half of 1968 additions (11)	121,100
	<u>583,649</u>
c/fwd.	5,722,168

b/fwd. 5,722,168

Less:

Capital allowances:

Industrial buildings (C)

Initial 68,356

Writing down 109,110

Plant etc. (D)

Initial 38,008

Writing down 1,385,4291,600,903

Case I profit

4,121,265

Interest received (38)

75,123

Chargeable gain (F)

4504,196,838

Less:

Charges on income:

Payments under covenant

(34) 768

Interest paid (35)

201,606

Royalties paid (37)

9,718212,092£3,984,746

(A)

[JOINT EXHIBIT N]

STATEMENT A

THE GOODYEAR TYRE & RUBBER COMPANY
(GREAT BRITAIN) LIMITEDSTATEMENT OF LIABILITY TO CORPORATION
TAX FOR THE YEAR ENDED
31ST DECEMBER 1969

Total profit less charges on income (B)	2,156,300
Group relief: —	
Regional Tyre Services Limited (year to 30.11.69)	176,532
Tyretreads Limited (year to 30.11.69)	1,703
Transport Tyres Limited (year to 30.9.69)	937
Progressive Tyre Sales Limited (1.4.69 to 30.11.69)	678
Roy Swinbourne Garages (Bilston) Limited (29.4.69 to 30.11.69)	816
J. Palmer & Son (Tyres) Limited (1.5.69 to 30.11.69)	<u>43,456</u>
	<u>224,122</u>
	<u>£1,932,178</u>

CORPORATION TAX PAYABLE

Financial year

1968 (3 months) £483,044 at 45%	217,369.80
1969 (9 months) £1,499,134 at 42½%	<u>615,881.95</u>
	833,251.75

Less: Credit for Republic of Ireland

Corporation Profits Tax (37) 38,455.27£794,796.48

STATEMENT B

THE GOODYEAR TYRE & RUBBER COMPANY
(GREAT BRITAIN) LIMITED
CORPORATION TAX COMPUTATION FOR THE
YEAR ENDED 31ST DECEMBER 1969

Profit after taxation	1,695,089
Add:	
Increase in provision for unrealised profit on sales to subsidiaries (2)	5,000
Amount written off Stratton Street lease (3)	722
Increase in general provision for bad debts (4)	6,075
Amount written off alterations to branches less allowable expenditure (5)	12,924
Increase in provisions for pensions of field representatives (7)	932
Provision for exchange losses on forward contracts for dollars (7)	16,183
Taxation (8)	1,440,000
Capital expenditure charged to revenue (9A)	173,861
Depreciation (10)	1,996,584
Decrease in revenue content of capital work in progress (12)	31,643
Disallowable items included in retail store expenses (18)	791
Disallowable items included in utilities and maintenance (19)	588

Disallowable legal and professional charges (21)	5,497
Stamp duties (25)	6,561
Disallowable items included in branch repairs and alterations (28)	619
Disallowable items included in repairs and alterations of retread plants (29)	2,441
Disallowable subscriptions and donations (30)	1,208
Interest expense (31)	193,192
Disallowable items included in miscellaneous expenses (32)	307,506
Royalties payable (33)	3,535
Disallowable business entertaining expenses	44,000
Disallowable gifts to customers	3,747
	<u>4,253,909</u>
	5,948,998
Less:	
Decrease in provision for future training expenses (7)	1,157
Decrease in provision for vacation expenses of American employees (7)	450
Interest receivable (34)	90,437
Deductible item included in incidental income (35)	32,327
Dividend income (36)	157,538
Akron service charge for 1969 (39)	237,000

Moulds:		
Half of 1968 additions	121,099	
Half of 1969 additions (9A and 11)	229,263	
Capital allowances: —		
Industrial buildings (C) —		
Initial	168,458	
Writing down	161,735	
Balancing	275	
Plant etc: —		
Initial (D)	146,360	
Writing down (D)	2,314,377	
Additional (E)	<u>6,392</u>	
		3,666,868
		2,282,130
Interest received (34)		<u>75,940</u>
		2,358,070
Charges on income: —		
Payments under covenant (30)	916	
Interest paid (31)	194,385	
Royalties paid (33)	<u>6,469</u>	
		201,770
		<u>£2,156,300</u>
		(A)

[JOINT EXHIBIT O]

STATEMENT A

THE GOODYEAR TYRE & RUBBER COMPANY
(GREAT BRITAIN) LIMITED

CORPORATION TAX COMPUTATION FOR THE
YEAR ENDED 31 DECEMBER 1970

Profit after taxation	2,368,278
Add:	
Increase in provision for unrealised profit on sales to subsidiaries (2)	50,000
Amount written off Stratton Street lease (3)	722
Amount written off alterations to branches less allowable expenditure (5)	23,529
General provision for redundancy payments (7)	1,000
Increase in general provision for training expenses (1)	4,367
Increase in provisions for pensions of field representatives (7)	983
Taxation (4)	1,517,500
Depreciation (10)	2,716,765
Proceeds on sale of moulds (14)	1,119
Capital expenditure charged to revenue (15A)	111,177
Disallowable items included in utilities and maintenance (21)	2,836
Disallowable legal and professional charges (23)	5,375
Stamp duties (27)	31,049

Disallowable items included in branch repairs and alterations (30)	4,106	
Disallowable items included in repairs and alterations of retread plants (31)	1,043	
Disallowable subscriptions and donations (32)	1,074	
Interest expenses (33)	174,714	
Disallowable items included in miscellaneous expense (34)	269,282	
Akron service charge (38)	21,516	
Disallowable business entertaining expenses (as agreed with BMIT)	44,000	
Disallowable gifts to customers	781	
		<u>4,982,940</u>
		7,351,218
Less:		
Decrease in general provision for bad debts (4)	34,323	
Decrease in provision for exchange difference on forward contracts for dollars (7)	12,324	
Increase in revenue content of capital work in progress (12)	1,364	
Interest receivable (35)	101,186	
Deductable items included in incidental income (36)	56,395	
Dividend income (37)	157,538	

Allowances in respect of moulds:		
One-half of 1969 additions	229,262	
One-half of 1970 additions (11 and 15A)	192,407	
Capital allowances: —		
Industrial buildings (B):		
Initial	139,492	
Writing down	164,783	
Balancing	14,817	
Plant etc (C):		
First year	65,254	
Initial (D)	55,268	
Writing down	2,256,095	
Balancing	5,531	
Additional allowances(D)	14,928	
		<u>3,500,967</u>
Case I profit		3,850,251
Interest received (35)		102,333
Chargeable gains less losses (E)		<u>1,651</u>
		3,954,235
Charges on income:		
Payments under covenant (32)	916	
Interest paid (33)	185,382	
		<u>186,298</u>
		3,767,937
Group relief:		
Autotyres Loughborough Limited	11,661	
Grooms Tyre Services Limited	1,426	

Master Tyre Services Limited (including Roy Swinbourne Garages' (Bilston) Limited)	14,983	
J Palmer & Son (Tyres) Limited	7,055	
Progressive Tyre Sales Limited	737	
Regional Tyre Services Limited	82,034	
Transport Tyres Limited	<u>3,430</u>	
		<u>121,326</u>
		<u>£3,646,611</u>
		(A)

STATEMENT A

THE GOODYEAR TYRE & RUBBER COMPANY
(GREAT BRITAIN) LIMITEDSTATEMENT OF CORPORATION TAX PAYABLE
YEAR ENDED 31 DECEMBER 1970

Profit less group relief			3,646,611
Less:			
Losses carried back from year ended 31 December 1973 under S.177(3A)			
ICTA 1970			<u>1,779,688</u>
			<u>£1,866,923</u>
Financial year 1969	466,730	at 42.5%	198,360.25
Financial year 1970	<u>1,400,193</u>	at 40%	<u>560,077.20</u>
	<u>£1,866,923</u>		758,457.45
Double tax relief re Republic of Ireland corporation profits tax (39)			<u>52,525.94</u>
			<u>£705,911.51</u>

[JOINT EXHIBIT P]

STATEMENT A

THE GOODYEAR TYRE & RUBBER COMPANY
(GREAT BRITAIN) LIMITED
STATEMENT OF LIABILITY TO CORPORATION
TAX FOR THE YEAR ENDED
31 DECEMBER 1971

Total profit less charges on income (B)	3,337,844	
Less:		
Claim under Section 177 (2) ICTA 1970 in respect of trading loss for 1972	1,397,828	
Less:		
Group relief: —		
Master Tyre Services Limited (year to 30.11.71)	40,117	
J. Palmer & Son (Tyres) Limited (year to 30.11.71) (provisional)	138,565	
Tyretreads Limited (year to 30.11.69)	65,528	
Fullwood Tyre Services Limited (28.5.71 to 30.11.71)	19,421	
Fullwood Quality Remoulds Limited (28.5.71 to 30.11.71)	9,674	
Staffordshire Motor Tyre Company Limited (28.5.71 to 30.11.71)	18,457	
	<u>1,689,590</u>	
	£1,648,254	

STATEMENT B

THE GOODYEAR TYRE & RUBBER COMPANY
(GREAT BRITAIN) LIMITED
CORPORATION TAX COMPUTATION FOR THE
YEAR ENDED 31 DECEMBER 1971

Profit after taxation (1)	3,092,697
Add:	
Amount written off Stratton Street lease (3)	723
Increase in general provision for bad debts (4)	29,978
Amount written off alterations to branches (5)	31,042
Increase in provision for pensions of field representatives (7)	1,037
Provision for vacation expenses of American employees (7)	854
Taxation (8)	1,564,500
Depreciation (10)	2,825,886
Proceeds on sale of moulds (14)	1,250
Disallowable legal and professional charges (24)	10,398
Disallowable items included in taxes (27)	2,715
Disallowable items included in repairs and maintenance (30)	42,716
Disallowable business entertaining expenses (31)	42,806
Disallowable subscriptions and donations (32)	825

Interest expense (33)	115,485	
Disallowable items included in miscellaneous expenses (34)	141,722	
Adjustment in respect of Akron service charge (38)	<u>215,482</u>	
		<u>5,027,419</u>
		8,120,116
Less:		
Decrease in provision for exchange difference on forward contracts for dollars (7)	3,859	
Decrease in provision for consumer incentive pro- gramme (7)	2,648	
Interest receivable (35)	106,032	
Deductible item included in incidental income (36)	44,687	
Dividend income (37)	91,658	
Allowances in respect of moulds:		
One half of 1970 additions	192,406	
One half of 1971 addi- tions (11)	183,802	
Capital allowances:		
Industrial buildings (C)		
Initial	152,810	
Writing down	177,510	
Balancing allowance on disposal of building (C)	458	

Plant (D):		
First year	1,716,525	
Writing down	2,060,714	
Additional allowance (E)	<u>39,550</u>	
		<u>4,772,659</u>
Case I profit		3,347,457
Interest received (36)		105,943
Chargeable gains less losses (F)		<u>1,695</u>
		3,455,095
Charges on income:		
Payments under deed of covenant (32)	683	
Interest paid (33)	<u>116,568</u>	
		<u>117,251</u>
		<u>£3,337,844</u>
		(A)

[JOINT EXHIBIT Q]

STATEMENT A

THE GOODYEAR TYRE & RUBBER COMPANY
(GREAT BRITAIN) LIMITEDSTATEMENT OF CORPORATION TAX RELIEF
FOR LOSSES AND CHARGES ON INCOME
FOR THE YEAR ENDED 31 DECEMBER 1972

Balance of Schedule D Case I loss (B)	<u>£1,400,243</u>
Surrendered by way of group relief to: Lee Tyre Co (UK) Ltd	2,415
Claim under section 177(2) against profit for the year ended 31 December 1971	<u>1,397,828</u>
	<u>£1,400,243</u>
Charges on Income	<u>£ 111,281</u>
Surrendered by way of group relief to: Les Tyre Co (UK) Ltd	<u>£ 111,281</u>

STATEMENT B

THE GOODYEAR TYRE & RUBBER COMPANY
(GREAT BRITAIN) LIMITEDCORPORATION TAX COMPUTATIONS FOR THE
YEAR ENDED 31 DECEMBER 1972

Profit after taxation (1)	1,202,295
Add:	
Amount written off Stratton Street lease (3)	729
Amount written off altera- tions to branches (5)	32,873
Increase in provision for pen- sions of field represen- tatives (£575 + £414) (7)	989
Increase in provisions for exchange difference on forward contracts for pur- chase of dollars (7)	7,585
Increase in provision for consumer incentive programme (7)	3,216
Taxation (8)	689,000
Depreciation (10)	3,363,353
Proceeds on sale of moulds (14)	9,967
Disallowable legal and auditing (23)	13,093
Disallowable items included in Taxes (27)	3,315
Disallowable items included in Repairs and Mainte- nance (30)	6,842
Disallowable business enter- taining (31)	41,832

Disallowable subscriptions and donations (32)	3,661	
Interest expense (33)	106,803	
Disallowable items included in miscellaneous expenses (34)	<u>49,005</u>	<u>4,332,263</u>
		5,534,558
Less:		
Decrease in provision for unrealised profit on sales to subsidiaries (2)	30,000	
Decrease in general provision for bad debts and credit notes (4)	35,967	
Decrease in provision for vacation expenses of American employees (7)	131	
Decrease in provision for redundancy payments (7)	1,000	
Dividend Income (35)	91,658	
Interest Income (36)	125,919	
Deductible item included on incidental income (37)	32,789	
Relief in respect of Irish Corporation Profits Tax (38)	34,249	
Allowances in respect of moulds:		
One half of 1971 additions	183,801	
One half of 1972 additions ex 1971 CWIP (balance claimable next year) (11)	252,353	

Capital Allowances		
Industrial Buildings (C)		
Initial	90,125	
Writing Down	205,983	
Plant (D)		
First Year	3,362,554	
Writing Down	2,544,231	
Additional allowances as a result of re-classification of 1971 CWIP (E)		
First Year	48,900	
Initial	<u>1,205</u>	
		<u>7,040,865</u>
Case I loss subject to section 177(2) claim against profits of the same accounting period below: —		(1,506,307)
Interest received on promissory note (34)	1,000	
Interest received (36)	<u>105,064</u>	
Balance of Case I loss	<u>(£1,400,243)</u>	
Charges on income:		
Payments under deed of covenant (gross) (32)	3,949	
Interest paid (33)	<u>107,332</u>	
	<u>£ 111,281</u>	

Note:

There are losses applicable to the Fullwood (Quality Remoulds) Limited trade totalling £1,403 carried forward.

[JOINT EXHIBIT R]

STATEMENT A

THE GOODYEAR TYRE & RUBBER COMPANY
(GREAT BRITAIN) LIMITEDSTATEMENT OF CORPORATION TAX RELIEF
FOR LOSSES AND CHARGES ON INCOME
FOR THE YEAR ENDED 31 DECEMBER 1973

Balance of Schedule D Case I loss (B)	(3,457,724)	
Surrendered by way of group relief to:—		
Tyre Service Holdings Ltd (not agreed)	73,000	
Booths Tyre Services Ltd (not agreed)	5,000	
The Outra Belting & Rubber Co Ltd (part)	15,376	
Progressive Tyre Sales Ltd	<u>3,655</u>	
	97,032	
Claim under Section 177(3A) ICTA 1970 against the profits for the year ended 31 Decem- ber 1971 and 31 December 1970	<u>£(3,360,693)</u>	
(Note: first year allowances at 100% total £3,395,665)		
Charges on income (B)	104,714	
Surrendered by way of group relief to:—		
Lee Tyre Co (UK) Ltd	89,321	
The Outra Belting & Rubber Co Ltd (balance)	<u>15,393</u>	
	104,714	
	<u>£ —</u>	

STATEMENT A/1

THE GOODYEAR TYRE & RUBBER COMPANY
(GREAT BRITAIN) LIMITEDSTATEMENT OF CLAIM UNDER SECTION 177(3A)
ICTA 1970 AND CORPORATION
TAX REPAYMENT ARISING

Losses available for claim under section 177(3A) ICTA 1970		<u>£3,360,693</u>
Relieved as follows:—		
Year ended 31 December 1971		
Profits less group relief	3,047,709	
Less: Irish corporation profits tax—double taxation relief not available	52,567	
: Claim under S177(2) ICTA 1970	<u>1,397,828</u>	
	1,450,395	
Claim under S177(3A) ICTA 1970	1,597,314	1,597,314
	<u>3,047,709</u>	
Year ended 31 Decem- ber 1970		
Profits less group relief	3,646,611	
Less: Claim under S177(3A) ICTA 1970	<u>1,763,379</u>	1,763,379
	<u>£1,883,232</u>	
		<u>£3,360,693</u>

CORPORATION TAX REPAYABLE

Year ended 31 December 1971

Payments made on account 650,000.00

Year ended 31 December 1970—revised liability

Financial year 1969	470,808 at 42.5%	200,093.40
1970	1,472,424 at 40%	564,969.60
	<u>£1,883,232</u>	<u>£765,063.00</u>

Less: double taxation relief	<u>52,525.94</u>
	712,537.06

Payments made on account 1,377,500.00

1969 overpayment offset against 1970 liability	<u>-49,988.75</u>
	<u>1,427,488.75</u>

	<u>714,951.69</u>
	<u>£1,364,951.69</u>

First repayment 420,000.00

Second repayment 885,707.92

1,305,707.92

59,243.77

Balance due £1,364,951.69

STATEMENT B

THE GOODYEAR TYRE & RUBBER COMPANY (GREAT BRITAIN) LIMITED

CORPORATION TAX COMPUTATIONS FOR THE YEAR ENDED 31 DECEMBER 1971

Profit after taxation (1) 580,872

Add:

Amount written off Stratton Street lease (3)	780
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Increase in general provision for bad debts and credit notes (4)	1,343
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Amount written off alterations to branches (5)	21,902
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Increase in provision for pensions of field representatives (£484 + £512) (6)	996
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Increase in provision for vacation expenses of American employees (6)	1,561
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Taxation (7)	244,489
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Depreciation (9)	3,630,047
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Proceeds on sale of moulds (13)	17,423
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Disallowable legal and audit (22)	2,705
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Disallowable items included in taxes (26)	989
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Disallowable items included in Repairs and Maintenance (29)	5,412
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Disallowable subscriptions (30)	2
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Disallowable donations (31)	2,527
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Interest expense (32)	100,558	
Disallowable items included in miscellaneous expenses (33)	84,824	
Disallowable business enter- taining expenses (38)	<u>44,445</u>	
		<u>4,160,403</u>
		4,741,275
Less:		
Decrease in provision for unrealised profit on sales to subsidiaries (2)	60,000	
Deferred remould plant repairs claimed (3)	12,398	
Decrease in provision for consumer incentive pro- gramme (6)	1,641	
Decrease in provision for ex- change differences on for- ward contracts for pur- chase of dollars (6)	7,585	
Investment grants on revenue expenditure (2a)	7,992	
Interest receivable (34)	254,436	
Deductible item included in incidental income (35)	25,374	
Relief in respect of Irish Cor- poration Profits Tax (36)	16,669	
Akron service charge adjust- ment (37)	(87,977)	

Allowances in respect of moulds one half of 1972 additions ex 1971 CWIP	252,353	
Capital allowances:		
Industrial buildings (C)		
Initial	126,923	
Writing down	209,100	
Balancing	539	
Plant etc (D)		
Initial	108,633	
First year	3,395,665	
Writing down	<u>1,917,817</u>	
		<u>6,309,149</u>
		(1,567,874)
Relief for appreciation in the value of stock and work in progress (40)		<u>(2,152,825)</u>
Case I loss subject to claim under S177(2) ICTA 1970 against profits of same ac- counting period below		(3,720,699)
Interest received (34)		<u>262,975</u>
Balance of Case I loss		<u>£(3,457,724)</u>
CHARGES ON INCOME		
Payments under deed of covenant (gross) (31)		3,273
Interest paid (32)		<u>101,441</u>
		<u>£104,714</u>

Note: there are losses applicable to the Fullwood (Quality Remoulds) Limited trade totalling £1,403 carried forward.

[JOINT EXHIBIT S]

STATEMENT OF CLAIM UNDER SECTION 177(3A) ICTA
1970 AND CORPORATION TAX REPAYMENT ARISING

Losses available for
claim under Section
177 (3a) ICTA 1970 £3,375,375

Relieved as follows:

Year ended 31 Decem-
ber 1971

Profits less group relief 3,046,082

Less: Irish corporation
profits tax –
double taxation
relief not available 52,567
Claim under S177
(2) ICTA 1970 1,397,828
1,450,395

Claim under
S177(3A) ICTA
1970 1,595,687 3,046,082 1,595,687

Year ended 31 December
1970

Profits less group relief 3,646,611

Less: Claim under
S177(3A) ICTA
1970 1,779,688 1,779,688
£3,375,375

CORPORATE TAX REPAYABLE

Year ended 31 December
1971 650,000.00

Payments made on ac-
count

Year ended 31
December 1970

Financial year 1969	466,730 at 42.5%	198,360.25
1970	1,400,193 at 40%	<u>560,077.20</u>
	<u>£1,866,923</u>	<u>£758,437.45</u>

Less: double taxation
relief 52,525.94
705,911.51

Payments made on
account 1,377,500.00

1969 overpayment offset against 1970 liability	<u>49,988.75</u>	<u>1,427,488.75</u>	<u>721,577.24</u>
			<u>£1,371,577.24</u>

First repayment –
March 1975 420,000.00

Second repayment –
April 1975 885,707.92

Third repayment –
June 1975 54,000.00

Fourth repayment –
August 1975 8,000.00

1,367,707.92

Balance due – 3,869.32
£1,371,577.24

In the Supreme Court of the United States

No. 88-1474

UNITED STATES, PETITIONER

v.

GOODYEAR TIRE AND RUBBER COMPANY AND AFFILIATES

ORDER ALLOWING CERTIORARI. Filed May 1, 1989.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Federal Circuit is granted.

May 1, 1989